

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF KENTUCKY**

IN RE:)	
)	
DECKER COLLEGE, INC.)	Case No. 05-61805(2)
)	
Debtor)	

AGREED ORDER

The Trustee, Robert W. Keats, (the “Trustee”) and the Commonwealth of Kentucky (“Commonwealth”) have reached an agreement with respect to the Commonwealth’s Proof of Claim (#560) and the Trustee’s application to employ a company to collect on the students notes (Document # 406) after consideration of the following information:

1. An Involuntary Petition for Chapter 7 Liquidation Bankruptcy for Decker College, Inc. / d/b/a Decker, Inc. / Decker College of Business (hereinafter “Decker” or “Debtor”) was filed on or about October 24, 2005 and Decker College, Inc. consented to the Entry of Order for Relief under Chapter 7 on or about November 2, 2005.

2. On or about October 1, 2005, Decker discontinued classes in its Associate of Applied Science Degree programs (“AASD”), including its AASD programs in Carpentry Science, Plumbing Science, Electrical Science, Heating, Ventilation and Air Conditioning Science that were commenced on or about April 1, 2004 [hereinafter, “Program”].

3. In recruiting students for the Program Decker represented to the students that the Program would be of “very little benefit” unless the entire program was completed and an AAS degree obtained by the student.

4. Decker was accredited by the Council on Occupational Education (“COE”) and the Trustee alleges that Decker’s accreditation was wrongfully retroactively revoked in 2005.

The Trustee also alleges that the U.S. Department of Education (“DOE”) denied Decker’s application for recertification to continue participation in the grant and loan programs as a direct result of the Council on Occupational Education having issued certain letters to the U.S. DOE that Decker asserts were erroneous. The Trustee further contends that as a result of the actions of the COE Decker ceased to be able to continue to offer classes in October 2005. The Trustee is seeking redress for what he contends to be the wrongful revocation of this accreditation.

5. Pursuant to the provisions of the Bankruptcy Code, the Commonwealth of Kentucky, Office of Attorney General, filed a Proof of Claim seeking penalties for violation of Kentucky’s Consumer Protection Act, KRS 367.110 et. seq., and restitution, in its capacity as *parens patriae* for and on behalf of Decker students who attended Decker College. The Commonwealth contends that Decker students enrolled in the Program have suffered harm as a result of Decker’s fraud and Decker’s failure to deliver the education expected and promised, and thus are entitled to restitution. The Trustee strenuously denies the validity of the allegations asserted by the Commonwealth.

6. The Commonwealth has objected to the Trustee’s request that he be permitted to employ a collection agency to attempt collection on approximately 2,200 notes for student loans that have been turned over to the Trustee as assets of the Debtor’s estate by Wilson & Muir Bank and Trust Co. and Citizens Union Bank and the Court has sustained that objection with certain conditions.

7. The Trustee has objected to the Commonwealth’s Proof of Claim and the Commonwealth has filed a Response to the Trustee’s Objection.

8. The Trustee and the Commonwealth each recognize that the outcome of the Pending Proofs of Claims, requests and objections is uncertain, and particularly considering the

costs of litigation, and believe an Agreed Order between the Commonwealth and the Trustee of the Debtor Estate in accordance with the following agreement is beneficial to the Debtor Estate and appropriate under the circumstances:

A. **STUDENT NOTES OWING TO DECKER.**

The Trustee agrees to and hereby does RELEASE the students of any and all liability for those notes that were “sold” or otherwise transferred, pledged or assigned to Wilson & Muir Bank and Trust Co. and Citizens Union Bank and/or which have since or could be turned over to the Trustee as assets. The Trustee agrees to and hereby does RELEASE any Decker student enrolled in the aforesaid Program of any and all liability or responsibility for debt owing to Decker or which may hereafter be acquired by Decker that was incurred for the purpose of attending the Program. It is the intent of this Agreement that if any student enrolled in the aforesaid Program obtained a loan from the Debtor to attend the Program or if any student owes the Debtor any amounts for attending the Program then said student shall not be required to repay said debt.

Upon entry of the Agreed Order, the Trustee and the Commonwealth will work together to notify students whose debt is released per this section of said release, provide contact information for credit reporting agencies (such as Equifax, Transunion, Experian) and inform such students that the student may want to contact credit reporting agencies to advise the agencies of the release of the debt and remove any unfavorable reference pertaining to the debt from his/her credit report.

It is understood that notes released by the Trustee herein shall not be included in the Commonwealth’s Proof of Claim, except those amounts paid-off by students for such loans may

be included in the Commonwealth's Proof of Claim to the extent otherwise permitted in Section B below.

B. STUDENTS WITH LOANS NOT OWING TO DECKER.

The Trustee agrees to withdraw his objection and to allow the Commonwealth's Proof of Claim in an amount **EQUAL TO THE TOTAL AMOUNT OF LOANS OBTAINED BY STUDENTS FROM A BANKING AND/OR LENDING INSTITUTION** whether private or federally funded, provided that the Student meets each of the following conditions/criteria:

1. The Student obtained his/her loans after **April 1, 2004** to attend the **Program** (as defined herein);
2. The Student did not complete the Program he/she was enrolled in;
3. The credits obtained while attending Decker were not transferred to another educational institution;
4. The loan(s) obtained by the Student has not been forgiven, discharged, excused and/or released by the creditor, or, as the case may be, the federal government, except any Student who actually has paid off the debt shall be entitled to restitution for the amount paid by said student. For example, it is understood that students whose federal loans were dischargeable under federal law for reasons of closed school discharge, death discharge, and/or total and permanent disability discharge shall not be included in the Commonwealth's Proof of Claim);

AND

5. The Student must submit an Affidavit to the Commonwealth of Kentucky, Office of the Attorney General within a time to be determined and agreed upon by the Trustee and the Office of the Attorney General in a form agreed to by the Commonwealth and

the Trustee attesting to the amount of loans he/she obtained and that he/she meets each of the above criteria 1 through 4. Notice of the terms of this Agreement with requests for information and affidavit shall be provided to the students by the Commonwealth if in the Commonwealth's sole discretion it determines that there are assets in sufficient amounts to justify the expense and effort of notification to students. The costs of the notice to students and reasonable costs of administration of the notices and returned affidavits shall be borne by the Commonwealth and the Commonwealth may make a motion for Administrative Claim for the costs of the notices and administration to which the Trustee will not object, but must be subject to the approval of the Bankruptcy Court.

Additionally, any Proof of Claim timely filed by an individual student on his/her own behalf meeting the foregoing 1-4 criteria shall be allowed in the amount of the loans obtained for attending Decker but not in excess of the amount stated in the Proof of Claim. In the event the amount requested in the Proof of Claim is greater than the debt incurred for attending Decker, the Trustee is not bound by this Agreement with respect to this additional amount, and is free to challenge and/or take whatever actions would be appropriate in addressing the additional portion of the student's claim. This Agreement is not intended and shall not be construed to provide additional limitations or restrictions on any student who filed a Proof of Claim other than just limitations that would already be imposed by law. Further, it is specifically understood that these Proofs of Claim are not a part of the Commonwealth's Proof of Claim and shall not be administered by the Commonwealth.

C. **COMMONWEALTH OF KENTUCKY’S CLAIM FOR CIVIL PENALTIES.**

The Commonwealth hereby agrees to forgo the claim for civil penalties that it may have against the Debtor for violations of the Kentucky Consumer Protection Act. It is expressly understood, however, that the Commonwealth may seek civil penalties and all other remedies against any principals, owners, agents, affiliates, officers, directors, and/or related entities for violations of the Consumer Protection Act for his/her/its own actions and/or committed by, for, through and/or on behalf of Decker College, Inc. and that the Commonwealth is not intending to waive, release and/or relinquish any claim against any other person or entity. This Agreement does not act as a bar to any criminal proceedings that may be brought by any law enforcement agency.

D. **NO ADMISSION OF FAULT, LIABILITY AND/OR VIOLATIONS OF THE CONSUMER PROTECTION ACT.**

The Trustee does not concede that Decker College, Inc. operated the Program (or any other programs) in a deceptive and unlawful manner in violation of the Consumer Protection Act.

E **NOTES DELIVERED BY TRUSTEE TO COMMONWEALTH.**

The Trustee has delivered to the Commonwealth the “Wilson & Muir” and “Citizens Union Bank” (as referenced herein) student notes. At the conclusion of this case, the Commonwealth may dispose of the notes in a manner it determines in accordance with the Commonwealth’s records destruction procedures without further notice to the Trustee or the Court.